

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CLIFF THOMAS,) Case 1:16-cv-01581
)
Plaintiff,)
)
v.) Alexandria, Virginia
) July 21, 2017
RAYMOND ROBERTS, *et al.*,) 11:04 a.m.
)
Defendants.)
) Pages 1 - 48

TRANSCRIPT OF CROSS-MOTIONS FOR SUMMARY JUDGMENT

BEFORE THE HONORABLE ANTHONY J. TRENGA

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 THE CLERK: Civil Action 1:16-cv-1581, *Cliff*
2 *Thomas v. Raymond Roberts, et al.*

3 Will counsel please identify themselves for
4 the record.

5 MS. WATSON: Cathryne Watson for the
6 plaintiff.

7 MR. WAYNE: Good morning, Your Honor.
8 Charles Wayne for the Defendant/Counterclaimant Raymond
9 Roberts, and I'm here with Brian Young.

10 THE COURT: Welcome to everyone.

11 We're here on cross-motions for summary
12 judgment. I've reviewed the briefing. I'd be pleased
13 to hear further from counsel as to what you think you
14 haven't already adequately explained.

15 Counsel for the plaintiffs.

16 MS. WATSON: For the plaintiffs?

17 THE COURT: Yes.

18 MS. WATSON: Thank you, Your Honor.

19 As the movant for summary judgment on the
20 defendants' counterclaim, if it please the Court, I can
21 begin with those points.

22 THE COURT: Well, I've reviewed the
23 pleadings. If there's anything you want to emphasize
24 or further explain, I'd be happy to hear you.

25 MS. WATSON: I believe we did try to cover it

1 thoroughly in the pleadings. If I may, I'll just
2 briefly enumerate what I believe the claims are based
3 on and why our position is that they don't state a
4 claim for -- or it must be dismissed on summary
5 judgment.

6 Defendants' Exhibit 56 is an e-mail to the
7 plaintiff's attorneys, as well as Rose Osamba and an
8 attorney friend named Mr. Nguyen. That says, As I told
9 one politician, it's better to be a pedophile in
10 Loudoun County than a black man.

11 Then in the next sentence of that e-mail, he
12 references Tom.

13 THE COURT: What's the date of that e-mail?

14 MS. WATSON: That's July 22, 2016.

15 THE COURT: All right.

16 MS. WATSON: In the very next sentence, the
17 plaintiff referenced Tom. In his deposition testimony,
18 he confirmed that's Tom Navarro. He's saying, Tom can
19 be convicted of sodomizing a 13-year-old kid and can
20 backfill thousands of tons of muck on a flood plain,
21 and Loudoun County does nothing. I believe that e-mail
22 quite explicitly refers to Tom Navarro and not Raymond
23 Roberts in reference to the alleged defamatory content
24 of that e-mail.

25 Exhibit 57 is a September 22 e-mail to a

1 Loudoun County official, Jeanine Arnett, wherein the
2 plaintiff forwarded an e-mail he had written to his
3 attorney, Larry Anderson. In the middle of a long
4 e-mail, he said, Or the fact that the defendant has
5 nude pictures of underage children on his camera coming
6 into my yard.

7 As we argued in our pleadings, we believe
8 that, given the information available to the plaintiff
9 at the time, it was neither negligent nor without
10 reasonable or probable grounds for the plaintiff to
11 believe that.

12 We also are of the position that the
13 plaintiff had been, as the record shows, in frequent
14 communication with this Loudoun County official and
15 others raising his concerns about his land use and
16 about his complaints with Raymond Roberts. Therefore,
17 it's our position that those officials did have an
18 interest in hearing his concerns, including this one.
19 Therefore, it would be protected by qualified
20 privilege. But even if it weren't, it's our position
21 that it was not negligent for Mr. Thomas to state that
22 it was his belief that those images existed on the
23 camera.

24 Next in time is Defendants' Exhibit 22 [sic],
25 an October 6, 2016, e-mail. Our position is

1 essentially the same. The plaintiff forwarded that
2 same e-mail I referenced a moment ago to other Loudoun
3 County officials. In the context of that, he's
4 complaining about not being able to get a meeting with
5 county officials to address his numerous concerns,
6 among them the treatment from Raymond Roberts.

7 Defendants' Exhibit 58 is an October 29
8 e-mail to Loudoun County officials. In that,
9 Mr. Thomas said that he believed that the defendant may
10 be using his camera to peep into his house and that it
11 was probable he had video of his children. He
12 requested that the sheriff be sent to advise that he
13 can't use his camera for peeping or pornography or
14 inappropriate purposes. So that e-mail doesn't contain
15 any actual allegations against Raymond Roberts. It
16 contains a legitimate request for law enforcement
17 intervention. I don't believe that can be a basis for
18 defamation.

19 Finally, Exhibit 59 is an October 31, 2016,
20 e-mail to the NAACP president, Phil Thompson. The
21 basis of that being cited is that the plaintiff
22 forwarded the e-mail I just referenced a moment ago.
23 Mr. Thompson is a lawyer, and he directed the plaintiff
24 on how to file a complaint with the NAACP to seek legal
25 redress. It's our position that this was in the

1 context of plaintiff's racial complaint or racial
2 discrimination complaints against Raymond Roberts,
3 which the NAACP has an interest in. Furthermore, it is
4 also in the context of seeking legal representation.
5 Perhaps more importantly, there's no actual allegation
6 against the defendant in the e-mail he forwarded.
7 Therefore, it's our position it cannot be a basis for a
8 defamation claim.

9 So that is a summary of our position
10 regarding our motion to dismiss the defamation claim on
11 summary judgment.

12 We've also said in our papers why we believe
13 there are ample issues of material fact, why the
14 plaintiff's claims of racial harassment and stalking
15 should be permitted to go to a jury.

16 THE COURT: All right. I'm going to let you
17 respond to that after we hear from the defendants.

18 MS. WATSON: All right. Thank you.

19 THE COURT: Mr. Wayne, I'll give you an
20 opportunity to respond to their motion and advance your
21 own motion.

22 MR. WAYNE: Thank you, Your Honor.

23 So in Virginia, statements may be defamatory
24 by implication so long as the meaning is plain. Here
25 we have both explicit and implicit defamatory

1 statements. In fact, we have conclusive proof of
2 defamation *per se*.

3 They say that Mr. Roberts -- Mr. Thomas says
4 Mr. Roberts committed a criminal offense involving
5 moral turpitude. You just heard recitation, and Your
6 Honor has the e-mails themselves, four to five e-mails
7 to people who did not request the statements or have a
8 need to see them.

9 Exhibit 56 which reference to being a
10 pedophile doesn't refer to Mr. Roberts is belied by the
11 text of the e-mail. In fact -- I won't quote all of
12 these e-mails to you but just this one. As Your Honor
13 has seen, it says, If I was filming a white person's
14 kid and had nude photos of them, you and the rest of
15 the county would have me locked up by now. But because
16 my kids are of color, no one will do a damn thing.
17 Raymond can have the Loudoun County's Sheriff's
18 Department come to my house and harass me on four
19 different occasions, and no harassment complaint is
20 being filed. As I told one politician, it's better to
21 be a pedophile in Loudoun County than a black man.

22 THE COURT: That's the July 22?

23 MR. WAYNE: Correct, Exhibit 56 in our
24 papers.

25 THE COURT: All right.

1 MR. WAYNE: So Mr. Thomas has no evidence to
2 prove the truth of that statement or any of the similar
3 statements in any of the e-mails.

4 This Court on the motion to dismiss, when
5 considering the civil claim based on the federal
6 pornography statute, has called that claim frivolous.
7 That claim is essentially the claim on the flip side of
8 this defamation claim.

9 Moreover, plaintiff argues that Mr. Roberts
10 somehow has the obligation -- although counsel didn't
11 mention this -- to view the thousands of hours of
12 security camera footage and the fact that he hasn't
13 done so shows somehow that there could be truth to
14 these statements. Of course, Mr. Thomas has the burden
15 of proof. He has had these thousands of hours of video
16 for months, but no images have been attached as
17 exhibits. Why not? Because this security camera in
18 issue is trained on a very narrow patch of ground on a
19 gap between the two gates to their property.

20 Moreover, Mr. Thomas has admitted, to his own
21 negligence and recklessness, to stating that
22 Mr. Roberts was involved in criminal conduct. At
23 Mr. Thomas' deposition, he was asked the question: Do
24 you believe that Mr. Roberts purposely took nude videos
25 of your children?

1 And the answer was, I don't really care
2 whether or not he purposely did it or incidentally did
3 it.

4 The statements that he's made are patently
5 false, and the answer to that deposition question shows
6 he acted with the requisite intent. That is both
7 negligent and reckless.

8 As to the notion of privilege, yes, a
9 qualified privilege would protect the communication
10 from allegations of defamation if made in good faith to
11 a person with a duty or interest in the communication.
12 Moreover, that person must have the authority to give
13 redress.

14 So with regard to each of these e-mails --
15 and I won't go through every one -- they are to
16 people -- even though, yes, one might be to the
17 sheriff, in addition to five or six other people. One
18 might be to his lawyers. This is the e-mail we've been
19 talking about of July 22, 2016, Exhibit 56. That was
20 sent to Jeanine Arnett, the chief of staff for the
21 chairman of the board of Loudoun County supervisors.
22 Again, this is not somebody who had a need to see it or
23 could afford redress. This is true of every single one
24 of these four e-mails, and there's a fifth which
25 repeats part of one of the earlier four e-mails.

1 The e-mails went, as I said, to Ms. Arnett.
2 They went to Ron Brown, Assistant County Attorney; to
3 the county attorney himself; to another assistant
4 county attorney; to the chairman of the board of
5 supervisors; to two other supervisors; to other staff
6 people. None of these people are the type of people
7 that would give rise to a qualified privilege as
8 recipients.

9 Moreover, I just heard that the e-mail that
10 went to the head of the local chapter of the NAACP is
11 somehow qualified as privilege because that person
12 happens to be a lawyer. He is not Mr. Thomas' lawyer,
13 and nothing in that e-mail can remotely be interpreted
14 as a request for legal representation. In fact, to the
15 contrary, Mr. Thompson, head of the local chapter of
16 the NAACP, effectively says that he can't help
17 Mr. Thomas.

18 THE COURT: Why wouldn't these e-mails to the
19 county people qualify for a qualified privilege?

20 MR. WAYNE: Because it's not the business of
21 the board of supervisors to deal with criminal conduct.

22 THE COURT: But the subject matter was
23 something that they would have an interest in, and it
24 involved one of their constituents. They would
25 presumably take an interest in that.

1 MR. WAYNE: I would respectfully disagree
2 with Your Honor. There is absolutely no authority out
3 there -- and we say this in our brief -- that
4 defamatory statements somehow interspersed with matters
5 which might be of relevance to the recipient are
6 somehow qualified for a privilege. Yes, this is all
7 bound up, and we'll get to this when we talk about our
8 motion. This is all bound up in a zoning dispute, a
9 land use dispute. But under the guise of coming to the
10 county -- and part of it does deal with the land use
11 dispute -- there are these other statements which the
12 chairman of the board of supervisors has no interest
13 in, cannot remedy. It's not within the board of
14 supervisors or the zoning staff's purview to deal with
15 allegations of criminal conduct, much less child
16 pornography.

17 THE COURT: All right. I understand.

18 MR. WAYNE: Moreover, the qualified
19 privilege, even if one existed, can be defeated by
20 malice. There is abundant evidence in the record that
21 Mr. Thomas had the requisite malicious intent as to
22 Mr. Roberts. So for the test, you need personal spite,
23 ill will independent of the communication or knowledge
24 that it's false or reckless disregard of whether it's
25 false.

1 Here the deposition passage I just quoted to
2 Your Honor where Mr. Thomas says -- he admits he
3 doesn't care whether Mr. Roberts incidentally or
4 purposefully possessed these photos.

5 We have Your Honor's own comment at the
6 motion to dismiss hearing where you said this was
7 frivolous.

8 In addition, the security video, again -- and
9 this is uncontested -- it's utterly improbable to
10 impossible that the footage would contain any such
11 images since that security camera is trained on a piece
12 of ground in the gap between the two gates to the two
13 properties.

14 Moreover, ill will and personal spite is
15 shown by Mr. Thomas' own e-mails. In Exhibit 38, a
16 March 12, 2016, e-mail, he says, Mr. Roberts is capable
17 of causing physical and emotional harm to Mr. Thomas'
18 wife and his children.

19 The very next day he writes an e-mail to his
20 Realtor who says to him, Well, the neighbors sound like
21 a nightmare.

22 He writes back and says, No. Mr. Roberts and
23 the neighbors are, quote, all bark and not much bite.

24 That's one day to the next. That shows the
25 ill will and the spite and the malice that Mr. Thomas

1 harbors towards Mr. Roberts.

2 Moreover, we have the comments, as Your Honor
3 has seen, where he calls Mr. Roberts a jackass, a
4 cowardly racist bastard from Canada. Plus, he refers
5 to Mr. Roberts and his attorney as racist bigots
6 because of the temporary injunction entered by the
7 Loudoun County Circuit Court in connection with the
8 easement lawsuit, the land use lawsuit.

9 So it's clear Mr. Thomas hated and hates
10 Mr. Roberts for opposing Mr. Thomas' planned commercial
11 ventures on his property. So he fabricated and
12 publicized false allegations that Mr. Roberts was
13 recording his children in the nude as a form of child
14 pornography. That is defamation *per se*.

15 THE COURT: All right. Do you want to speak
16 to your motions?

17 MR. WAYNE: Yes, Your Honor.

18 Your Honor should grant Mr. Roberts' summary
19 judgment on Mr. Thomas' two remaining claims for four
20 reasons. First, there's no dispute as to any material
21 fact. Second, there is no competent evidence that
22 could satisfy Mr. Thomas' *prima facie* burden under the
23 Virginia Hate Crimes Act or the Virginia Stalking Act.

24 It's not just this case. He's had ample
25 opportunity to develop such evidence. There was also

1 the Loudoun County protective order hearing, a daylong
2 evidentiary hearing involving precisely the same issues
3 as Your Honor is considering now. They had two bites.
4 Mr. Thomas has had two bites at the apple and has no
5 evidence whatsoever.

6 Moreover, the evidence that he does point to,
7 this so-called evidence, is contradicted by every
8 single piece of documentary evidence on the same
9 subject.

10 Finally, Mr. Thomas has engaged in a pattern
11 of deception beginning in December 2015 and continuing
12 through today.

13 So with regard to the Virginia Hate Crimes
14 Act, as Your Honor knows, Mr. Thomas needs to prove
15 racially motivated intimidation or harassment or
16 violence or vandalism.

17 So taking the racial animus element first,
18 what do they point to? The Panera meeting that Your
19 Honor is familiar with. There's no evidence of racial
20 animus regardless of what Mr. Thomas or Mrs. Thomas may
21 say now. Mr. Thomas' two e-mails to Mr. Roberts the
22 very next day show what happened at the Panera meeting
23 and that there was no racial animus.

24 In the first e-mail, Mr. Thomas says, quote,
25 My wife was a bit intimidated at the meeting. She

1 thought it was going to be a meet and greet. I
2 explained to her that sometimes men get passionate with
3 regards to matters and to not make much of it, close
4 quote.

5 The second e-mail on the same day, quote,
6 Donna is good. She just thought it would be a meet and
7 greet and other wives would be there. She didn't know
8 it would be a Q&A. But no worries. All is good,
9 exclamation point, close quote.

10 The other evidence that they point to or the
11 big theme -- and this was addressed last week before
12 Your Honor in the attorneys' fees motion -- is the
13 objection to Mr. Thomas' planned commercial use but not
14 objecting to the prior owner, Mr. Pomata, who was
15 white.

16 So as I told Your Honor last week, Lot 3 has
17 an equestrian center on it. It's a grandfather use.
18 It's absolutely consistent with the 1997 protective
19 covenants. Everybody who bought since then knew that
20 that was something they had to live with.

21 But in the spring of 2015, eight months
22 before Mr. Thomas bought the property, Mr. Pomata, the
23 owner of Lot 4A, which is the lot that Mr. Thomas
24 eventually bought, was marketing that lot for
25 commercial use to a prospective buyer who wanted to

1 build a soccer facility, a prospective buyer who wanted
2 to build a golf academy that would also be an event
3 center, like a wedding venue.

4 All of the neighbors opposed those uses. In
5 fact, our Exhibit 7, an April 2015 e-mail chain among
6 all the neighbors, Metzgers (phonetic), Berlin,
7 Casagrande, Roberts, Grady, and others, objected to
8 those very uses. Exhibit 8 are the documents relating
9 to the proposed soccer facility, and Exhibit 9 are
10 documents relating to the proposed golf academy.

11 So in terms of racial animus, there's
12 absolutely no proof, none at the Panera meeting or
13 anything else and certainly not with regard to the
14 alleged disparate treatment of Mr. Thomas, vis-a-vis,
15 Mr. Pomata.

16 Now, what about conduct? There's an
17 allegation that Mr. Roberts fired a gun, and Mr. Thomas
18 says that Mr. Roberts fired a gun 3 times over 18
19 months. There was -- or I should say he heard gunfire
20 3 times over 18 months. There's absolutely no evidence
21 it was Mr. Roberts firing a gun or, even if he did, he
22 did so with the purpose of intimidation or violence.
23 Mr. Thomas even testified on deposition -- and we've
24 attached this to our brief -- that it could have been
25 someone else firing the gun, not Mr. Roberts. Of

1 course, as Your Honor has heard, firing a gun in this
2 neighborhood is entirely lawful under the Loudoun
3 County ordinances.

4 The other conduct, tailgating. This notion
5 that Mr. Roberts tailgated Mr. Thomas in a threatening
6 way is contradicted by Mr. Thomas' own video which is
7 Plaintiff's Exhibit 15. Even if it is Mr. and
8 Mrs. Roberts in the car behind Mr. Thomas, who is
9 recording it over his shoulder as he's driving down the
10 road, it shows the car to be a reasonable legal
11 distance behind Mr. Thomas.

12 Now, the video that they point to, in May
13 2016 -- and this is undisputed -- Mr. Thomas trespassed
14 onto Mr. Roberts property and cut down two acres of
15 trees. Mr. Thomas' own e-mail confirms that.
16 Mr. Roberts, in response to this trespass, had called
17 the sheriff.

18 Shortly thereafter, Mr. Thomas constructs a
19 fence between the two properties, and it is being
20 painted. The painters are on Mr. Roberts' side of the
21 fence. He asked them who told them this was all right
22 to do it. If Your Honor has watched the video or at
23 least read the transcript in our brief, he said, you
24 know, Who asked you to do this? He said, Was it the
25 owner? The person Mr. Roberts was talking to had

1 limited English. He says, Was it the black guy? And
2 then he said in Spanish, El negro? That's it.

3 In fact, there's a case on point with regard
4 to such a comment which plaintiff cites which says if
5 you're going to use such a term and it's descriptive
6 and not pejorative, it doesn't show racial animus.
7 That's exactly what we have here.

8 The surveillance camera I've covered, and
9 that in sum is all of the conduct that plaintiff points
10 to, not just with regard to the Virginia Hate Crimes
11 Act but also with regard to the stalking claim. With
12 regard to the stalking claim, you have to show *prima*
13 *facie* evidence of conduct intended to place another in
14 reasonable fear of death or injury. So the same
15 conduct that I just went through applies to that claim
16 as well. There is no basis for Mr. Thomas to say that
17 he was reasonably fearful of anything.

18 In fact, Mr. Thomas' own testimony and the
19 evidence show, if anything, if in fact he is being
20 truthful, that he, in fact, is paranoid because he
21 accused Robert Milburn, a Loudoun County zoning
22 official, of sending a relative of his across state
23 lines to surveil Mr. Thomas. Again, that's in our
24 brief, and all of it is supported by documentary
25 evidence.

1 So for all of those reasons, the stalking
2 claim and the Virginia hate crime claims should be
3 dismissed on summary judgment.

4 Now, with regard to my final point about the
5 pattern of deception, Mr. Thomas has argued
6 consistently in this case that the land use dispute has
7 no relevance, but at the motion to dismiss hearing --
8 in fact, we argued this. In fact, this case, this
9 so-called civil rights case was an attempt to gain
10 leverage in the land use dispute. Discovery has borne
11 this out. Exhibit 27 is an e-mail chain to which
12 Mr. Thomas was added in late 2015 after he bought the
13 property. In a January 2, 2016, e-mail, Mr. Thomas
14 says -- and the issue was the neighbors had heard that
15 he was going to build a winery. In response to that,
16 Mr. Thomas says, Oh, those are rumors. Wine making is
17 a, quote, hobby that I might pick up, unquote.

18 He did not disclose on that January 2, 2016,
19 e-mail that two weeks before, three days after he
20 closed on his property, he had requested and was sent
21 paperwork to schedule a pre-application conference with
22 the Loudoun County zoning staff. The purpose of that
23 conference, which was held later in January, was to
24 build and operate a commercial winery. So that never
25 happened after 40 or 50 neighbors strenuously opposed

1 the use of the property for that purpose. That's one
2 example of the pattern of deception that stretches all
3 the way back to 2015.

4 Next Mr. Thomas created an entity called
5 Courtland Resort, LLC, which does business as Courtland
6 Resort. Exhibits 22 and 23 are screenshots from the
7 website. It's a center for events, weddings, retreats,
8 meetings.

9 Now, at the present time, as Your Honor has
10 heard, no commercial use is permitted on any of the 12
11 lots within this development by virtue of the temporary
12 injunction that's been entered by the Loudoun County
13 Circuit Court and also the fact that because the
14 homeowners' association was allowed to become defunct
15 that the county has said until a proper homeowners'
16 association is in place, the *status quo* will be
17 maintained. So there's no commercial activity.

18 So at his deposition on May 24 of this year,
19 Mr. Thomas was asked about the website, the so-called
20 Courtland Resort website. He was asked, Have you
21 received any calls attempting to make reservations at
22 this facility?

23 And he said, Yes.

24 What did you tell them?

25 I told them I wasn't taking reservations.

1 Why?

2 For the very reason I just said. I told them
3 there's no commercial activity permitted at this time.

4 Exactly one month later Mr. Thomas rented the
5 property, Lot 4A, to a party promoter. The
6 advertisement on Facebook is our Exhibit 71, which
7 makes reference to needing to purchase tickets to go to
8 this event. They charged admission, and Exhibit 77
9 which includes the ad from Facebook, another version of
10 that ad from Facebook, \$50 to get in the day of the
11 event. The rest of Exhibit 77 is photographs that show
12 that this event included hundreds of people, a disc
13 jockey, alcohol, marijuana use, and strippers.

14 These photos are directly contrary to the
15 representations of Mr. Thomas' declaration under oath,
16 which is Plaintiff's Exhibit 22, where he says this was
17 a party for his family. There was no marijuana use.
18 There was no alcohol. Only iced tea and lemonade was
19 served. He says that complaints of noise in the same
20 affidavit -- complaints of noise and marijuana smoking
21 were totally false and the product of racism. These
22 assertions in the sworn declaration were quoted to the
23 Court by counsel last Friday and vouched for by her.
24 That's despite the fact that counsel did, in fact, have
25 a copy -- that's Exhibit 71 -- of that Facebook ad

1 which makes reference to the party, shows it's a
2 commercial event, talks about the need to buy tickets.

3 So as I say, the pattern of deception here
4 stretches from late 2015 through today. Not only were
5 the neighbors deceived here, but in fact, by virtue of
6 Mr. Thomas' recent declaration, the Court as well has
7 been deceived.

8 Thank you.

9 THE COURT: Counsel, I'll let you respond
10 both to reply on your motion and responding to the
11 defendants' motion.

12 MS. WATSON: Yes, Your Honor. I'll start
13 with the allegation of a pattern to deceive. The
14 defendants' exhibit is not authenticated in any way.
15 It's a printout of some Facebook postings of the
16 photographs that counsel referenced. They don't on
17 their face have any connection to the plaintiff or his
18 house. Not to mention, it's outside of the fact
19 pattern of this case.

20 I would also posit that the January 2016
21 e-mail counsel referenced as demonstrating deception
22 that the plaintiff planned to meet with the county to
23 explore permitted uses of his property, that doesn't
24 show a pattern of deception. He was exploring what he
25 could do with his property. It doesn't refute what he

1 told his neighbors, that wine making was a hobby, and
2 that he wanted them to have their mind eased on that
3 point.

4 Now, with respect to the plaintiff's claims
5 in this case of racial harassment and stalking, the
6 record includes multiple witnesses who heard gunfire
7 coming from Raymond Roberts' property. The defendant
8 believed it was coming from that direction. Rose
9 Osamba did. During the protective order hearing, three
10 additional witnesses said they heard gunfire coming
11 from that direction. They also witnessed that Raymond
12 Roberts would be around Mr. Thomas' property taking
13 pictures, approaching the property, and also that --

14 THE COURT: Isn't the evidence that he had a
15 shooting range on that property?

16 MS. WATSON: That's right, Your Honor, but --

17 THE COURT: There's no evidence that these
18 guns were pointed at him or his property in any
19 fashion?

20 MS. WATSON: There's no evidence it was
21 pointed at him or his property. However, the witnesses
22 testified that shortly after Mr. Thomas would arrive
23 home, gunfire began. It's our position that a jury
24 could hear that within the context of all of this, and
25 that's something that we urge, that these actions are

1 not to be taken in a vacuum but in their whole and in
2 the context of the whole.

3 There are also witnesses who saw Mr. Roberts
4 following the plaintiff in his car, and the plaintiff
5 testified that he was fearful of everything. Counsel
6 mentioned that he felt paranoid, and his wife testified
7 to that as well.

8 In addition, the evidence from the security
9 camera shows it's pointed right at the plaintiff's
10 property. You can see very clearly. Eventually, in
11 June 2016, the plaintiff put up a board so that his
12 house wasn't so visible.

13 The defendant has put forward an inconsistent
14 explanation for this. He said the reason was that --
15 in his interrogatory answers, the reason was the
16 clearing of the trees incident in May 2016, but that
17 camera went up in February 2016. And you can't see
18 where the trees were cleared. So a jury seeing that
19 would conclude that the reason for that camera is to
20 monitor the Thomas property, which is what it did.

21 Under the case that we cited, *Johnson v.*
22 *Hugo's*, we think all of this taken together could be
23 considered by a reasonable person to be intimidating
24 and harassing.

25 There's also evidence that Raymond Roberts

1 was racially motivated. I won't leave -- explain it in
2 the papers, but when Pomata testified he got along well
3 with the neighbors -- notwithstanding that the
4 neighbors had issues with what he did with his
5 property, they got along well.

6 In addition, the video that counsel
7 referenced of Raymond Roberts approaching Cliff Thomas'
8 worker, that should go in front of a jury because what
9 that shows is Raymond Roberts doesn't go up to that
10 worker and say, This is my property. Can you please
11 leave? He says --

12 THE COURT: Well, he does say that.

13 MS. WATSON: Well, he says, Who told you you
14 can come on my property? Who told you that? The black
15 guy? El negro?

16 Then later in the video, it becomes evident
17 that maybe the trespass itself is not what upsets him
18 because he says, If you want to come on my property,
19 that's fine. That's fine.

20 So it's not even -- that makes it seem like
21 it's not the trespass itself he's so upset about, what
22 he's upset about is who told you you could do it? A
23 black guy?

24 A jury looking at that could infer and
25 understand that person to be motivated by animus

1 against the black guy. So we think that creates a
2 triable issue of fact as to his motivation.

3 THE COURT: All right.

4 MS. WATSON: If I may, Your Honor, may I
5 respond to two things from counsel's argument regarding
6 our motion to dismiss very briefly?

7 THE COURT: All right.

8 MS. WATSON: I believe counsel in his
9 argument more or less acknowledged by saying that the
10 defamation *per se* claim is a flip side of one of the
11 dismissed claims in Mr. Thomas' complaint of child
12 pornography -- but as the record shows, Mr. Thomas
13 never said child pornography or any crime like that.
14 Using the complaint is subject to some judicial
15 privilege, absolute privilege. So that cannot be the
16 basis of a defamation claim.

17 I would also reiterate that any maliciousness
18 evidence -- you know, the evidence is -- it's
19 undisputed that Mr. Thomas thinks Raymond Roberts is a
20 racist and he doesn't like him and he's been angry at
21 him. Maliciousness in the context of defamation means
22 that he didn't have probable grounds for what he said
23 or that he actually believed them to be false. The
24 defendant can't adduce evidence to support either of
25 those conclusions.

1 The camera was pointed at Mr. Thomas' house
2 24 hours a day. You can see from the footage that it's
3 very clear. His front yard is there. You can see
4 there's -- you can see Mr. Thomas when he's on the
5 property putting up a board. It's all very clear. As
6 both he and his wife testified, their children were in
7 states of undress at times while on the property.

8 So I believe the available facts overcome any
9 kind of maliciousness finding.

10 THE COURT: All right.

11 MS. WATSON: Thank you.

12 THE COURT: Thank you.

13 Mr. Wayne, I'll give you the last word on
14 your motion.

15 MR. WAYNE: Thank you.

16 I would just like to address the point that
17 the photos of the invitation from the Facebook page and
18 the photos are, quote, not authenticated. The
19 advertisement for the party has Mr. Thomas' address on
20 it, number one. Number two, the photos contain photos
21 of the house at that address.

22 That's all I have.

23 THE COURT: All right. Thank you.

24 I've reviewed these motions, and I'm in a
25 position to rule on them.

1 There is before the Court cross-motions for
2 summary judgment.

3 First, Defendant/Counterclaim Plaintiff
4 Roberts moves for summary judgment on the plaintiff's
5 remaining claims for racial harassment and stalking and
6 on his counterclaim for defamation *per se*. The
7 plaintiff moves for summary judgment on that
8 counterclaim for defamation and defamation *per se*.

9 In assessing whether either party is entitled
10 to summary judgment on his respective claims, the Court
11 is obligated to view the evidence most favorably to the
12 nonmoving party together with all reasonable
13 inferences.

14 Let me first address the plaintiff's stalking
15 and racial harassment claims.

16 In order to establish his claims for
17 stalking, the plaintiff is required to prove that,
18 first, the defendant directed his conduct toward the
19 plaintiff on at least two occasions; secondly, the
20 defendant intended to cause fear, knew that his conduct
21 would cause fear, or should have known that his conduct
22 would cause fear; and third, that the defendants'
23 conduct caused the plaintiff to experience reasonable
24 fear of death, criminal sexual assault, or bodily
25 injury.

1 In order to establish his claim for racial
2 harassment, the plaintiff is required to prove that he
3 was the subject of intimidation or harassment that was
4 motivated by racial animosity.

5 Here the plaintiff bases his claims on
6 evidence that Defendant Roberts fired guns on his
7 property when Thomas was present on his adjacent
8 property, has security cameras on his property that are
9 aimed at Thomas' property, and that Roberts has
10 tailgated Thomas on the road into their shared
11 cul-de-sac where Thomas and Roberts own adjoining
12 properties with gates right next to each other. Thomas
13 also claims that Roberts falsely reported a trespass to
14 the sheriff; although, it is undisputed that the
15 trespass, in fact, occurred. The only dispute is the
16 extent of the trespass.

17 With respect to these claims, the Court has
18 reviewed all of the evidence, including the videos that
19 the plaintiff has submitted that he claims evidences
20 harassment, racial animus, and an instance of
21 tailgating. In that regard, the record is clear and
22 unequivocal that the entire dispute between these two
23 neighbors grows out of a dispute over the use plaintiff
24 intended to make of his property or is legally entitled
25 to make of his property.

1 The antagonisms between the parties obviously
2 has escalated over time and certainly do not reflect
3 well on either of them, but there's no evidence that
4 the defendants' positions and actions taken in
5 furtherance of his positions were based on race or
6 anything else other than the defendants' good faith
7 belief that the plaintiff had or was attempting to use
8 his property in an unauthorized or unlawful manner.

9 The tailgating video shows a car described as
10 Roberts a normal distance away from Thomas, who drove
11 and narrated. The video does not show harassing or
12 intimidating conduct.

13 Similarly, the video recording evidencing
14 gunshots merely evidences sounds of guns that were
15 being fired in the neighborhood where the plots of land
16 are many, many acres. The evidence, I think, is
17 undisputed that Roberts had a firing range on his
18 property lawfully.

19 There is no evidence that Thomas ever saw
20 Roberts fire a gun, and these actions cannot be
21 considered as harassing or intimidating conduct on the
22 part of Roberts towards Thomas.

23 There is no evidence in the record beyond
24 Thomas' mere assertions that the security cameras are
25 actually used to surveil Thomas and his family, rather

1 than to keep watch of Roberts' own property.

2 As to the stalking claim, none of Roberts'
3 actions could be construed to reasonably induce fear of
4 death or bodily injury.

5 Moreover, as to the racial harassment claim,
6 there has been no use of racial epithets on the part of
7 the defendant or any other evidence of race-based
8 animus as opposed to a land use dispute.

9 The video the plaintiff submitted involving
10 plaintiff's worker makes clear that Roberts used
11 Thomas' race or referenced Thomas' race only as a means
12 of identifying him after the workman was having
13 difficulty identifying who had authorized his presence
14 on his property and was not used in a racially charged
15 manner.

16 Additionally, there is no other basis from
17 which to infer a racial motivation for any of the
18 defendants' actions. There's also insufficient
19 evidence to establish or even suggest that Roberts sat
20 back and allowed the previous white owner to conduct
21 commercial activities. In fact, Roberts did not move
22 into his home until a couple of months before Thomas
23 purchased his. The evidence indicates that Roberts
24 consistently and indiscriminately resisted commercial
25 activities, not that he treated Thomas any differently.

1 The specific conduct relied on does not
2 separately or collectively prove sufficient as a matter
3 of law to provide evidence of stalking or racial
4 harassment, nor can there be any reasonable inferences
5 from the specific acts plaintiff has identified that
6 could sufficiently establish either stalking or racial
7 harassment.

8 Based on all the evidence viewed most
9 favorably to the plaintiff, the Court finds and
10 concludes that the evidence is insufficient as a matter
11 of law for any reasonable jury to find that plaintiff
12 has established the elements of either claim and that
13 the defendant is entitled to judgment as a matter of
14 law on both the stalking claim and the racial
15 harassment claim.

16 With respect to the defendants' counterclaim
17 for defamation, the Court has reviewed that claim and
18 the evidence, as well as the *jurisprudential*
19 intricacies of defamation law in Virginia. Under
20 Virginia law, the elements of defamation are
21 publication of an actionable statement with the
22 requisite intent. An actionable statement is both
23 false and defamatory.

24 Accordingly, as a threshold matter, if the
25 statements at issue are either not defamatory or are

1 objectively true or protected expressions of opinion,
2 no actionable defamation exists. Whether a statement
3 is an actionable statement of fact or nonactionable
4 opinion is a matter of law to be decided by the Court.

5 If a statement is not opinion, the plaintiff
6 in a defamation action has the burden of proving that
7 the statement is false. Whether a plaintiff has
8 sufficiently proven the falsity of the alleged
9 defamatory statement is a jury question.

10 With respect to the fact or opinion issue,
11 under Virginia law, statements of opinion are generally
12 not actionable because the statements cannot be
13 objectively characterized as true or false.
14 Accordingly, speech which does not contain a provably
15 false factual connotation or statements which cannot
16 reasonably be interpreted as stating actual facts about
17 a person cannot form the basis of a common-law
18 defamation action. Statements that are relative in
19 nature and depend largely upon the speaker's viewpoint
20 are expressions of opinion. Nevertheless, factual
21 statements made in support of an opinion can be
22 defamatory.

23 In determining whether a statement is one of
24 fact or opinion, a court may not isolate one portion of
25 the statement at issue from another portion of the

1 statement. Rather, a court must consider the statement
2 as a whole.

3 Moreover, the rule that opinions are
4 unactionable derives from federal law. Here the
5 federal standard also applies to the extent that it's
6 more protective of speech than Virginia's standard. In
7 that regard, the Fourth Circuit has noted that a trial
8 judge should consider the author's or speaker's choice
9 of words and decide whether the challenged statement is
10 capable of being objectively characterized as true or
11 false, examine the context of the challenged statement
12 within the writing or speech as a whole, and consider
13 the broader social context into which the statement
14 fits.

15 The verifiability of the statement in
16 question is a minimum threshold issue. So that even if
17 a statement could be verified, it would not be
18 actionable if it is clear from any of the three
19 remaining factors individually or in conjunction that a
20 reasonable reader or listener would recognize its
21 weakly substantiated or subjective character as opinion
22 and discount it accordingly.

23 Statements can be defamatory *per se*, that is
24 they can impute to a person the commission of some
25 crime or criminal offense involving moral turpitude for

1 which the party, if a charge is true, may be indicted
2 and punished. In addition, a defamatory charge need
3 not be made in direct terms; rather, it may be made by
4 inference, implication, or insinuation. However, the
5 meaning of the alleged defamatory charge cannot, by
6 innuendo, be extended beyond its ordinary and common
7 accepted meaning.

8 The statement need not be sufficient within
9 itself to establish all the elements of the offense
10 imputed so long as unaided by innuendo but assisted by
11 the reasonable inferences to be drawn from the words
12 used, while not charging a criminal offense in express
13 terms, nevertheless imputes to the plaintiff the
14 commission of the offense. The trial judge, not the
15 finder of fact, must determine whether a statement is
16 defamatory *per se* because it imputes the commission of
17 a crime involving moral turpitude.

18 The critical consequence of finding that a
19 statement is defamatory *per se* is that it relieves the
20 plaintiff of establishing as a prerequisite to recovery
21 special damages, which include pecuniary loss,
22 emotional upset, and embarrassment; whereas, in cases
23 involving a defamatory statement that is not defamatory
24 *per se*, special damages must be shown as a prerequisite
25 for recovery.

1 Where a statement is not defamatory *per se*,
2 the Virginia Supreme Court has described the standard
3 of defamation as follows:

4 Defamatory words are those tending so to harm
5 the reputation of another as to lower him in the
6 estimation of the community or to deter third persons
7 from associating or dealing with him. A false
8 statement must have the requisite defamatory sting to
9 one's reputation. Characterizing the level of harm to
10 one's reputation required for defamatory sting, the
11 Supreme Court has stated that defamatory language tends
12 to injure one's reputation in the common estimation of
13 mankind, to throw contumely, shame, or disgrace upon
14 him, or which tends to hold him up to scorn, ridicule,
15 or contempt, or which is calculated to render him
16 infamous, odious, or ridiculous.

17 If the Court determines that the statement is
18 not defamatory *per se*, then it must decide whether the
19 alleged statements are sufficiently defamatory on their
20 face to permit a fact finder to decide whether, in
21 fact, the statements were actually defamatory.

22 Under Virginia law, elements of intent also
23 bear on a plaintiff's ability to recover for
24 defamation. A private plaintiff may recover actual,
25 compensatory damages where the defendant published the

1 statement knowing that it was false, or, believing it
2 to be true, lacked reasonable grounds for such belief,
3 or acted negligently in failing to ascertain the facts
4 on which the publication was based. The application of
5 this negligence standard is expressly limited, however,
6 to circumstances where the defamatory statement makes
7 substantial danger to reputation apparent. The trial
8 judge shall make such a determination as a matter of
9 law. If, on the other hand, no substantial danger to
10 reputation is apparent from the statement in issue,
11 then under Virginia law, actual malice under the *New*
12 *York Times v. Sullivan* standard must be established to
13 recover compensatory damages.

14 However, even if the plaintiff is a private
15 citizen, the principle of qualified privilege protects
16 a communication from allegations of defamation if it is
17 made in good faith to and by persons who have
18 corresponding duties or interests in the subject of the
19 communication.

20 For example, a citizen has the right to make
21 a citizen's complaint about a police officer's
22 misconduct, and such a complaint is qualifiedly
23 privileged if made to a person having authority to
24 afford redress.

25 Even where there is a qualified privilege, it

1 can be defeated by a plaintiff's clear and convincing
2 showing of common-law malice, which can be accomplished
3 by any of the following:

4 First, the statements were made with
5 knowledge that they were false or with reckless
6 disregard for their truth;

7 Second, the statements were communicated to
8 third parties who have no duty or interest in the
9 subject matter;

10 Third, the statements were motivated by
11 personal spite or ill will;

12 Fourth, the statements included strong or
13 violent language disproportionate to the occasion; or

14 Fifth, the statements were not made in good
15 faith.

16 The question whether a communication is
17 privileged is a matter of law for the court, but the
18 question of malice is one of fact for the jury.

19 Based on those principles of law, the Court
20 has reviewed each of the statements that Roberts has
21 claimed is defamatory which appear in six e-mails.

22 The first e-mail is an e-mail dated May 25,
23 2016, to one of Thomas' contractors copying a friend
24 and sometimes business associate and also a Loudoun
25 County zoning official in which he refers to Roberts,

1 among other things, as a jackass and a cowardly racist
2 bastard from Canada.

3 The Court concludes that these statements
4 within the context made are emotional rantings and
5 generic insults that constitute unactionable opinion
6 without any stated factual basis that may be proven or
7 unproven.

8 In that regard, the Court adopts the
9 reasoning of the Seventh Circuit in *Stevens v. Tillman*,
10 855 F.2d 394, Seventh Circuit, 1988, in which the court
11 provides an extended discussion and analysis of why the
12 use of the term "racist" by the president of a PTA
13 against an elementary school principal was not
14 defamatory under Illinois law and the First Amendment.
15 The core of that view is that the bare assertion of
16 racism was not tethered to any facts.

17 In *Fleming v. Moore*, 275 S.E.2d 632, a 1981
18 Supreme Court of Virginia case, the Supreme Court of
19 Virginia considered whether it was defamatory *per se* to
20 accuse a UVA professor turned real estate developer of
21 racism because the defendant charged the plaintiff with
22 not wanting blacks to reside within sight of his home,
23 a specific allegation of racism. Because the charge
24 did not directly affect his reputation or his work as a
25 UVA professor, the court ruled that it was not

1 defamatory *per se* and remanded it to the trial court,
2 presumably to consider whether it was sufficiently fact
3 based to constitute defamation under the looser
4 standard.

5 The dissent in that case opined that the
6 charge of racism is so widely and loosely used in
7 today's society that simply calling someone a racist
8 cannot be defamatory as it no longer has a commonly
9 understood meaning. This view coincides with the
10 Seventh Circuit's view that accusations of racism are
11 no longer obviously and naturally harmful and that the
12 word has been watered down by overuse, becoming common
13 coin in political discourse.

14 This particular analysis also applies to
15 Thomas' August 10, 2016, e-mail to Roberts' attorney in
16 which he stated that, I know all about you people and
17 have allowed a lot of harassment from you bigots.

18 Even assuming this statement could be
19 construed as referring to Roberts as well, this bare
20 accusation is not actionable.

21 With respect to the second e-mail which is
22 dated July 22, 2016, to Rose Ann Osamba, whom I
23 understand was trained as a lawyer but was not licensed
24 as a lawyer but is a friend and sometimes a business
25 associate, to two of his lawyers, and to a friend who

1 is also an attorney in which he, again, vented about
2 them not pursuing the attorney's representation in
3 which he said, among other things, If I was filming a
4 white person's kid and had nude photos of them, you and
5 the rest of the county would have me locked up by now.

6 Here, given the context of the recipients,
7 which are Thomas' lawyers and friends, the factual
8 assertion in this statement is, at most, that Roberts'
9 security camera captured nude pictures of Thomas'
10 children, not that Roberts was engaging in child
11 pornography. The balance of the e-mail likewise makes
12 clear that Thomas' concern or belief is that Roberts'
13 camera was capable of picking up pictures or videos of
14 his children nude in the yard and those that received
15 this statement in the context of the entire e-mail
16 would not naturally and presumably think that Thomas
17 was accusing Roberts of creating child pornography.

18 There is an implication that what Roberts was
19 doing is illegal, but it is couched in hypothetical
20 language, that is, if Roberts' camera captured his
21 children changing or urinating, it would be illegal.
22 The meaning of the alleged defamatory charge cannot, by
23 innuendo, be extended beyond its ordinary and common
24 meaning.

25 For these reasons, the Court concludes that

1 this is e-mail is insufficient to sustain a charge of
2 defamation *per se*.

3 Nevertheless, with respect to whether it can
4 otherwise be seen as defamatory, the Court must
5 consider whether this statement is reasonably capable
6 of harming Roberts' reputation with the requisite sting
7 such as to hold him up to scorn, ridicule, or contempt.
8 The Court concludes on that issue that it is sufficient
9 to create a jury issue as to whether the statement was
10 defamatory and false.

11 Nevertheless, because any recovery would be
12 for a statement that is not defamatory *per se*, Roberts
13 is also required to show special damages as a
14 prerequisite to recovery in non-*per se* cases. Given
15 that this statement was only made to Thomas' lawyers
16 and his close friends and business partners, presumably
17 he understood the entire factual scenario in which the
18 comment was made.

19 The Court concludes as a matter of law that
20 Roberts cannot prove any special damages as to the
21 statement, that is damages based on a tangible
22 pecuniary, emotional, or embarrassing effect on him or
23 his reputation based on this e-mail. There is no
24 evidence concerning what effect it had on any of the
25 recipients or anyone else.

1 With respect to e-mail Number 3,
2 September 22, 2016, the e-mail to a staff aide, the
3 chair of the Board of Supervisors of Loudoun County,
4 which included in its history a September 19, 2016,
5 e-mail that Thomas had sent to his attorneys in which
6 he said, You would not file a criminal complaint when I
7 advised you that Raymond Roberts tried to intimidate me
8 by shooting off his high-powered rifle when he knew I
9 was at the property or the fact that he has nude
10 pictures of my underage children on his camera coming
11 into my yard or the fact that he tailgated me on Laurel
12 Wood Court in an effort to intimidate me.

13 Here the factual basis as stated for Thomas'
14 belief that Roberts' conduct constituted a crime for
15 which the criminal complaint should issue. He falls
16 short, however, of accusing Roberts of committing an
17 offense of child pornography or pedophilia. Therefore,
18 it is not defamatory *per se*. Nevertheless, this
19 statement is reasonably capable of sufficiently harming
20 Roberts' reputation and holding him up to scorn,
21 ridicule, or contempt. It is, therefore, a jury issue
22 as to whether it was defamatory and whether it is
23 false.

24 The Court likewise concludes that the content
25 of the e-mail and the recipients are such that the

1 Court cannot rule as a matter of law that Roberts
2 cannot establish any special damages with respect to
3 damage to his reputation. As a matter of law, there is
4 sufficient danger to Roberts' reputation with these
5 public officials and the others e-mailed that appears
6 in the circumstances of this statement since it is made
7 to an aide to the chair of the county supervisors, who
8 would necessarily need to communicate it to others in
9 the county government given its nature, as the purpose
10 of Thomas' e-mail is to request a meeting with her
11 boss, an elected official.

12 Because of the recipients and because Thomas'
13 statements concerned and was in the context of a
14 dispute between neighbors and made to a public official
15 who had a corresponding duty or interest in the dispute
16 between neighbors and his motive included getting the
17 county to take action on his situation, any defamatory
18 content in this statement is entitled to a qualified
19 privilege which requires a clear and convincing showing
20 of malice to overcome, together with the showing
21 required in any event that Thomas published the
22 statement knowing it was false, or, believing it to be
23 true, lacked reasonable grounds for such belief, or
24 acted negligently in failing to ascertain the facts on
25 which the publication was based.

1 Accordingly, it's for the jury to decide
2 whether the statements in this e-mail were defamatory,
3 false, or whether Thomas published it with the
4 requisite intent.

5 With respect to e-mail Number 4, an
6 October 6, 2016, e-mail to two assistant Loudoun County
7 attorneys, the county attorney, the chair of the Board
8 of Supervisors of Loudoun County, the supervisor, and
9 two staff aides to the county supervisor in which
10 Thomas included in its history the other e-mails just
11 discussed dated December 22, the same analysis applies
12 to this e-mail as well. It's a jury issue as to
13 whether they were defamatory, false, and whether he
14 published it with a requisite intent.

15 With respect to e-mail Number 5, which is an
16 October 29, 2016, e-mail, again, to the county
17 officials and also the Loudoun County sheriff, in that
18 e-mail, he has stated, among other things, We believe
19 Mr. Roberts may be using his camera to peep in our
20 bedroom window. It is also probable that Roberts has
21 nude photos of my children on his camera. Please send
22 the sheriff to his house to advise him he cannot be
23 using his camera to peep in to my house or to obtain
24 pornography. I am seeking efforts through a federal
25 channel to obtain a subpoena of the camera. If nude

1 photos of my children are found on this camera,
2 criminal charges will be filed.

3 Here, whether Thomas' statements constitute
4 defamation *per se* is a close call. He uses the word
5 "pornography," arguably referencing the probable nude
6 photos of his children, and explicitly states that
7 criminal charges will be filed if he finds evidence of
8 this. Nevertheless, he did not, in fact, say Roberts
9 engaged in child pornography. The question is whether
10 this is reasonably insinuated or implied in his e-mail.

11 As the Supreme Court of Virginia stated in
12 the *Schnupp v. Smith* case, which is 457 S.E.2d 42, a
13 1995 case, a defamatory *per se* statement must impute a
14 crime unaided by innuendo but assisted by the
15 reasonable inferences to be drawn from the words used.

16 Given the context and the surrounding words
17 and accusations, the statement is capable of
18 insinuating that Roberts probably engaged in child
19 pornography. But that is such an outlandish claim,
20 based only on Roberts having security cameras pointed
21 at Thomas' property, and one the Court itself, based on
22 the pleadings, found to be frivolous, it is difficult
23 to see how a reasonable person could take him to be
24 alleging the crime of child pornography.

25 Again, given the recipients and the context

1 of this e-mail, the Court concludes that the statement
2 is entitled to qualified immunity. Therefore, the
3 Court concludes, based on the context and substance of
4 the e-mail, that it is not defamatory *per se* but is
5 sufficient to have submitted to the jury to decide
6 whether the statements in this e-mail were defamatory,
7 false, and whether Thomas published it with a requisite
8 intent.

9 The same analysis applies to the October 29,
10 2016, e-mail to the president of the Loudoun County
11 NAACP in which the previous e-mail was included in the
12 history, except that this e-mail is not entitled to a
13 qualified privilege.

14 In sum, the Court concludes that the evidence
15 is sufficient for Roberts' defamation claim to be
16 submitted to the jury as outlined in this ruling.
17 Accordingly, the defendants' motion for summary
18 judgment is granted in part and denied in part.

19 It is granted as to plaintiff's claims for
20 racial harassment and stalking under Virginia law and
21 is denied insofar as it seeks summary judgment -- that
22 Thomas' statements were defamatory *per se* in his
23 counterclaim.

24 The plaintiff's motion for summary judgment
25 is also granted in part, denied in part. It is granted

1 as to Roberts' claim that the statements in his e-mails
2 were defamatory *per se* and to the extent Roberts'
3 defamation claim is based on statements other than
4 those that the Court found actionable. The motion for
5 summary judgment is otherwise denied.

6 The Court will issue an order.

7 All right. Is there anything further?

8 (No response.)

9 THE COURT: Have either of you scheduled your
10 settlement meeting with the magistrate judge?

11 MR. WAYNE: Not yet, Your Honor.

12 THE COURT: I am going to direct you to do
13 that immediately.

14 I would also just make the observation that
15 counsel could have provided a little service to their
16 clients in this kind of a case in assisting them in
17 attempting to resolve this matter.

18 MR. WAYNE: Yes, Your Honor.

19 MS. WATSON: Yes, Your Honor.

20 THE COURT: All right. Counsel are excused.

21 The Court is going to take a brief recess
22 before it continues the civil docket.

Time: 12:07 p.m.

23 I certify that the foregoing is a true and
24 accurate transcription of my stenographic notes.

25 /s/
Rhonda F. Montgomery, CCR, RPR